

ZONING BOARD OF APPEALS
MEETING MINUTES
February 12, 2008
4:00 P.M.

CALL TO ORDER: Mr. John Stetler called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Teri Barker, Deland Davis, Mike Fatt, Gentry Hammons, Jim Moreno and John Stetler

Members Excused: Greg Dunn, and Carlyle Sims

Staff Present: Glenn Perian, Senior Planner; and Leona Parrish, Admin. Assistant

ADDITIONS OR DELETIONS TO THE AGENDA:

Motion made by Mr. Jim Moreno to have Mr. John Stetler Chair the meeting today as the Chairperson and Vice Chairperson are excused; supported by Mr. Deland Davis; all in favor, none opposed.

OLD BUSINESS: None

NEW BUSINESS:

Mr. John Stetler explained the process of the meeting for the Zoning Board of Appeals, noting the staff report is read then they hold a public hearing where the appellant as well as anyone else may speak and share any material they might have in support. He will then ask anyone to come forward that wishes to speak against the issue. If there are no other comments he will then close the public hearing, a motion will be made and the board will then discuss and vote. After the vote, if it is not in agreement with the petitioner, they may appeal to the Circuit Court.

Appeal #Z -01- 08: Mr. Glenn Perian stated this is a use variance from Ms. Joanne B. Johnson, 3971 Capital Avenue, S.W., Lot 79, Battle Creek, requesting to allow a three unit residential for a property zoned "R-1C Single Family Residential District" located at 167 Bryant Street. He stated this was brought to us in response to the owner of the property seeking to register it as a rental property in accordance with the Rental Housing Ordinance, Chapter 1463.

Mr. Glenn Perian stated that all the evidence we were able to obtain was that this property has always been zoned as R-1C "Single Family Residential". That until February 5, 2008 it was our belief that the home was built and legally existed as a single family dwelling. Stated it was found that in 1934 a building permit was issued to modify the structure into a two-family dwelling, noted it can exist as a two-family unit being grandfathered since the 1934 building permit, but not a three-family dwelling at this point. Everything else seems to be in accordance with the rental ordinance, such as parking, but the issue today is to determine if the three-unit dwelling should continue to exist.

Ms. Joanne Johnson, 3971 Capital Ave., S.W., Lot 79, Battle Creek, MI (owner) was present to speak. Stated she purchased this property two years ago as a three unit and discovered that when she went to register the property that parking was an issue, said she does have a lot beside her garage that would provide enough parking. Stated according to the City Assessors records she obtained, that in 1963 their records show it as being three(3) apartments with two basements, three(3) separate electric, furnaces,

kitchens, baths, and noted it would be costly for her to change back to a one or two unit if not approved. Noted she is the type of landlord that likes her property to be up-to-date and had put over \$15,000 dollars into the property, such as new roof, electrical work, gutters, carpeting, washer and dryer, paint, and that she takes great pride in her apartment house and if there is any problem she makes the repairs immediately. States she works with the neighbors and makes sure they have good tenants for the neighborhood and they let her know if there are any problems and take immediate action if there is a need. She makes her tenants sign an agreement that if there is a problem they can be removed faster and she collects her rent twice a month in case there is a problem. Stated that parallel to her street nearby on Converse Street there is two(2) apartment buildings that have twelve(12) units in each one and that her property is not in the middle of single-family homes. If she were to change it back to a single-family or two-unit, it would not warrant the cost for that area.

Ms. Johnson handed-out a sheet showing income and expenses for this property, and that if she were not allowed to keep it as a three unit; because of the loss of income she would not be able to afford to keep this property and would have to have the bank foreclose. If she were to reduce to a two-unit then he only would have about \$60.00 left over and would not be enough for repairs or anything else that would happen, states she really needs it to be a three-unit apartment for it to continue.

Mr. James Moreno asked Ms. Johnson if she had spoken to the Neighborhood Planning Council to receive feedback from them. Ms. Johnson said she was not aware of any Neighborhood Planning Council and had not contacted anyone.

Mr. Dave Farmer, 221 Colorado St., Battle Creek, MI, Zoning Inspector, City of Battle Creek came forward to speak, stated that if the Zoning Board decided to decrease from a three-unit to two-units it would not be necessary for any modification to be done other than to close one apartment. That it could be done without any additional expense to the owner, it would only decrease her income. Stated that regarding the parking, it would be grandfathered to allow one space for each dwelling unit. They look at when the property was built and became a rental. He was here to help clarify any questions.

Mr. John Stetler stated it could be possible that the plumbing is not separate and heating would need to still be maintained for that third unit so it would not freeze, etc.

Mr. Casey Cadieuz, 112 S. 31st Street, Battle Creek, MI came forward to speak and asked if this property was a three-unit prior and have always been a three-unit when Code Compliance had done inspections. Ms. Johnson stated she had just purchased two years ago. Mr. Cadieuz asked if the property was recognized as a three(3) unit for 45 years, he stated that if it had been registered and inspected as a three-unit then why is it any different now.

Mr. Glenn Perian stated that in 1934 it was legally converted to a two-unit and no records are found to show that it was legally converted to a three(3) unit from 1934 to present date. That is what is at issue today, he is aware there are some circumstances where the Assessors office recognizes there are three-units in certain buildings where they do not necessarily check to see how those units had gotten there, they are just recognizing that they are there. We are not showing that it was done legally.

Mr. Dave Farmer stated that the old housing code until October 16, 2007, a zoning review had not been required when certifying rental units. Stated that the Assessors office does not confirm if the use has been legally changed. He noted the new rental registration process is now finding those that were

changed illegally. That the zoning officer does not have the authorization to say it is allowed, they can only get an appeal from the Zoning Board. When the question is asked why it has been allowed for so many years, the answer is that no one was charged with the responsibility to do anything about it.

Mr. Cadieuz stated that when a property has been inspected by Code Enforcement that has been a three unit and followed through with the inspections as a three unit, the city at that point became vested in the property, and when a property owner invest in a particular property that has been vested as a three unit by the city and spend money on this property and then the rug gets pulled from underneath them, does not seem right.

Ms. Johnson stated that she understands about the zoning and what was said about having the expenses of making it into a two apartment building, but the point is that she will not have enough income if she does not have the (3) unit apartment, which is what she had shown on the document provided, and will lose the home if it is not a (3) unit. She said she does not see where it is changing anywhere in the neighborhood, because it has been there for at least 45 years, if not longer.

Mr. Glenn Perian wanted the board to be aware that it is stated on page 8 of their report that in the By-Laws of the Zoning Board of Appeals, that five(5) votes in favor would be required to approve this use variance request.

Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MS. TERI BARKER MADE A MOTION TO APPROVE # Z-01-08 VARIANCE TO ALLOW A VARIANCE TO USE AS “THREE(3) UNIT RESIDENTIAL” FOR PROPERTY LOCATED IN AN “R-1C SINGLE FAMILY DISTRICT” LOCATED AT 167 BRYANT STREET, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. Gentry Hammons asked Mr. Farmer when the last initial inspection was done for this property. Mr. Farmer stated he did not have that information; Mr. Eric Campbell, Neighborhood Services was present and stated that January 3, 2008 was supposed to have been done.

Mr. Moreno asked if it existed as a three unit for 45 years and if this was a foreclosure property, before it was purchased, it would have behooved the new owner to have checked into the rental permitting process and number of units that were approved through the City before investing money on a property. He noted that based on the rules the zoning board have to work with and under, if it is disclosed that this is for financial gain; that is one of their red flags that bars them from granting a variance, if it involves the owner making a financial gain.

Mr. Stetler was concerned with the third unit not being used and that it could cause a problem with not being heated, etc. He stated he thinks it is a hardship and practical difficulty for the owner. Stated if he were inspecting or looking for a multi-family home in that neighborhood, he would not question the zoning as it looks or does not have the appearance to him of being a single-family zoning, because multi-family zoning is so close. He concedes that it is nice to check the zoning before purchasing, but unfortunately that is not always done.

Mr. Glenn Perian stated that Mr. Gregory Dunn was excused from this meeting, and asked that it be noted for the record that if he were present, he would be voting in opposition for this appeal request.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN; (5) OPPOSED (BARKER, FATT, HAMMONS, MORENO, AND DAVIS); (1) IN FAVOR (STETLER): MOTION DENIED

Mr. John Stetler stated he was sorry that the appeal request was not approved, and that they may appeal to the Circuit Court.

Ms. Johnson asked the board why they would want another foreclosed property in the city.

APPROVAL OF MINUTES:

MOTION WAS MADE BY MR. MIKE FATT TO APPROVE THE DECEMBER 11, 2007 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR. JAMES MORENO. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. James Moreno stated regarding the petitioners parting comments, it is not that they want to see more properties fall off the tax roll, but that they are charged with a roll and responsibility based on guidelines to follow as finding of fact so to deviate from them could be setting precedence if approved, and could see more properties requesting the same in the future. He stated that the Planning Commission might get involved and provide some assistance; otherwise if you hold the rules that are set before them it could paint a grim picture for some landlords.

Mr. John Stetler stated he seen enough unique circumstances that he could support, as having other properties in the neighborhood being multi-units and had been used as a 3-unit for 45 years. Noting that this owner had maintained the property and was not deteriorating, would now let it become foreclosed.

Ms. Teri Barker stated that she could see if it were approved that more properties would also be seeking approval in the future. She stated there is a new rental ordinance in place; wondered when reviewed by the Assessors office, if they could make note those properties that are not in compliance.

Mr. Mike Fatt stated he believes that the new Rental Registration Ordinance is a good ordinance and they need to support, he wonders if they could not get the Assessors office to review what the code is and not continue to perpetuate when you have a three family that does not comply with code.

Mr. Glenn Perian stated that it would be a useful thing to do, but it is not the Assessors job to report. Stated they had heard from the Assessors office that if they were to do so it could cause property owners to now allow access to their properties. He stated that as rental properties are being reviewed, they will be seeing more properties like today's come before the Zoning Board. He wanted the board to know

that as these properties are being reviewed for compliance that every effort is made by staff to give them every benefit of doubt as far as nonconforming situations as far as parking etc., by researching records thoroughly.

Mr. Glenn Perian wanted the board to note the report handed out from Mr. Michael Buckley, Planning Director, which was a report of previous years (2007) petitions and activities for Zoning Board of Appeals, Historic District Commission and Planning Commission.

Mr. Deland Davis stated he gets uncomfortable being in a situation that because it has been this way for some time, that this body is going to make it alright. Said he looks at where the property sits and if it still can be used for what it is zoned for and did not see any reason that the property cannot still be used as a two-unit, and he was uncomfortable with approving because they said it had been used as such for many years.

Mr. Mike Fatt stated the Assessors Office should have reported the use and not allowed and could have eliminated a potential problem. By not recognizing a violation, in the owners mind it is allowed, which is not the case.

Mr. James Moreno stated the City departments need to work better together, and as ordinances and things change it needs to be corrected as they move forward.

Mr. Dave Farmer stated he is identified to report code and zoning issues, that he knows code, building and zoning, some and is not an expert in any of them, and is charged by the City of Battle Creek to identify code, zoning, and lead issues of which he is trained by the State. His job description is not to deal with assessing and the Assessor's job description is not to know the codes for health, city housing, and zoning, etc. The new ordinance "Chapter 1463" is bringing departments together and by State Law some persons are not allowed to make the call.

Mr. Mike Fatt stated they have a data base showing the zoning and should use it to compare the two. He asked that because she had a building permit for two units, does this in fact make it legal.

Mr. Glenn Perian stated yes, that the building permits and occupancy was allowed for the two-units and they give them the benefit of the doubt it was legally done. They look for any evidence they can find.

Mr. Farmer stated before the October 16, 2007 Rental Ordinance was passed the rental inspection did not confirm that the zoning was appropriate for the number of units being inspected and registered.

Mr. Glenn Perian referenced to page 6 or 7 of the staff report, noting that because it has been there for sometime does not make it legal. They try to find out if/or when it was done legally.

Mr. John Stetler stated that it looked like a hardship to him to leave one unit unused.

ADJOURNMENT: Mr. John Stetler made a motion to adjourn the meeting, all in favor. Meeting adjourned at 4:48 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department

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